

**DECLARATION OF JAMES R. DICKENS
EXHIBIT B
(PAGES 1-22)**

UNITED STATES DISTRICT COURT
DISTRICT OF ALASKA

MYRNA I. JOHNSON,
Plaintiff,

v.

FRED MEYER STORES, INC.,
a Delaware corporation;
and JAIME SAN MIGUEL,

Defendants.

Case No. J04-008 CV (JKS)

VIDEOTAPED DEPOSITION OF JAIME SAN MIGUEL
Pages 1 through 270, Inclusive
Taken: Tuesday, January 24, 2006
Place: Juneau, Alaska

1 department. I don't remember her exact title. She
2 works out of the Fred Meyer main office.

3 Q. Is that in Portland?

4 A. That's correct.

5 Q. Okay. Is that main office still in
6 Portland, even though they have been taken over by
7 Kroger?

8 A. That would be correct, yes.

9 Q. Okay. I didn't know how that affected
10 any of the other Fred Meyers.

11 Beyond that statement -- beyond
12 the statement to Erin Collins and the statement to
13 Peggy Callahan, have you given statements to
14 anybody else that is not associated with your
15 lawyer, that is not in Mr. Dickens' office?

16 A. No.

17 Q. Okay. Where were you born?

18 A. San Juan, Puerto Rico.

19 Q. Okay. In what year?

20 A. 1968.

21 Q. And your date of birth?

22 A. It's November 5th.

23 Q. And were you educated in Puerto Rico?

24 A. That would be correct.

25 Q. Okay. Did you go to high school there?

1 A. Not that I'm aware of.

2 Q. Now, in February, February or March of
3 2001, you became the manager of the apparel
4 department; is that correct?

5 A. That's correct.

6 Q. Okay. And how did you learn there was
7 going to be an opening?

8 A. When the manager resigned from his
9 position.

10 Q. And do you know under what
11 circumstances Mr. Laney resigned from his position?

12 A. I don't know that.

13 Q. Any reason, any understanding as to why
14 he resigned?

15 A. No, I don't.

16 Q. So Mr. Laney resigned, and then was
17 there again a posting for an opening?

18 A. That's correct.

19 Q. Okay. And you applied for that?

20 A. That's correct.

21 Q. Okay. And when you applied for that,
22 who interviewed you?

23 A. Fred Sayre, the store director. And
24 also Dennis Affleck was involved in some manner.

25 Q. And do you know what the -- are the

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1 requirements for the job given with the posting in
2 terms of what the prerequisites are?

3 A. Yes.

4 Q. Okay.

5 A. Yes, it is.

6 Q. Is there a preference in Fred Meyer to
7 hire internally?

8 A. Yes.

9 Q. Were there education requirements for
10 the manager job?

11 A. There -- well, they have some education
12 requirement, yes.

13 Q. Okay. Did you meet those requirements?

14 A. Yes.

15 Q. When you became manager, did that then
16 leave an opening for lead assistant or first
17 assistant?

18 A. Yes.

19 Q. Okay. When did that job get noticed
20 out?

21 A. I don't remember the date.

22 Q. Okay. Do you recall, did you have any
23 discussions with Myrna Johnson regarding that job?

24 A. Probably after it got posted and she
25 showed some interest in applying for the job.

1 Q. Okay. Did you expect that she would
2 not have interest in the job?

3 A. No. I thought she would be interested
4 in applying for the job.

5 Q. And why did you think she'd be
6 interested?

7 A. Because it would be a promotion, and I
8 know she has talked to me about her goals, things
9 that she wanted to do. And I know she had told me
10 in the past that she was interested in applying for
11 the job if that position came open.

12 Q. So you knew that when you became
13 manager?

14 A. When I became manager, yes.

15 Q. And at that time, did you have any
16 other jobs besides working as the lead assistant at
17 Fred Meyer, any other sources of income?

18 MR. DICKENS: At which time,
19 Counsel?

20 Q. In 2001, right before you became the
21 manager.

22 A. Right before, yes.

23 Q. Okay. What other ways were you earning
24 income?

25 A. I had a part-time job with Burton

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1 tough time dealing with losing your marriage; isn't
2 that right?

3 A. Yes.

4 Q. Okay. And did that -- was that
5 reflected in -- did you have trouble at work
6 because of that in terms of concentrating and
7 paying attention?

8 A. Yes.

9 Q. Okay. And you guys have children,
10 right?

11 A. Yes, we do.

12 Q. Okay. And there are two kids?

13 A. One.

14 Q. One child? And is that a boy?

15 A. It's a boy.

16 Q. Okay. And he's a -- you're a baseball
17 player, right?

18 A. I play baseball, yes.

19 Q. And you were doing everything you could
20 to keep your relationship with your son while
21 dealing with the stuff with your wife, right?

22 A. That's correct.

23 Q. Okay. So did you find that you'd
24 leave work at times, either because you were
25 emotionally upset or to take care of your son,

1 given that manual to complete to review and to sign
2 off on?

3 A. I don't know that, no.

4 Q. Okay. How about when you promoted her
5 to first assistant, to the lead assistant manager
6 position, was she given training in regards to that
7 manual?

8 A. I make the training manual available to
9 Ms. Johnson.

10 Q. Well, that wasn't my question. My
11 question was, was she given training in regards to
12 that manual? Was she given the manual and told,
13 "You need to read this manual and fill out this
14 section at the end and give it to me"?

15 A. Right. We get the book and we go "Here
16 is" -- I don't remember exactly how many chapters
17 there is in the book. But "This is all the areas
18 that you need to perform at an acceptable level so
19 you are to -- so you are successful, so you can
20 keep moving on to the next level of management."

21 Q. Okay. And you gave that to
22 Ms. Johnson?

23 A. Yes, I did.

24 Q. Okay. The manual. And did she, in
25 turn, then return to you the section at the back of

1 Q. Is that just an average because that's
2 always how many there are?

3 A. That's correct.

4 Q. Okay. There wouldn't have been a
5 reason why the department would have fewer than
6 normal or more than normal at that time?

7 A. There could be reasons why, but . . .

8 Q. If you wanted to pull an employee list
9 of everybody working in January of 2002, how would
10 you go about doing that?

11 A. I think my first step would be to ask
12 the time and attendance office. Now, if they have
13 the ability to look for that or not, I don't know.
14 But that would be my first contact.

15 Q. Of the 25 to 30 employees that you had
16 in that department in January of 2002, do you know
17 how many men were working in the department?

18 A. I don't remember.

19 Q. More than 10?

20 A. No.

21 Q. Couldn't you pretty much count them on
22 one hand, normally?

23 A. Anywhere between three to six.

24 Q. Okay.

25 A. At any one point.

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1 Meyer. And it states it is a list of employees
2 supervised by Jaime San Miguel from January 1,
3 2002, to June 30, 2002. In reviewing that list,
4 does that appear to be a complete list of the
5 individuals you supervised during that time period?

6 A. No. I supervised these employees, but
7 it seems pretty -- a pretty short list. Those are
8 employees that I did supervise.

9 Q. This is only 20 people. So it is
10 probably missing maybe 10?

11 A. You know, it could be at this point it
12 was 20, but my best recollection is, usually we
13 carry anywhere between -- employees -- between 25
14 and 30 employees.

15 Q. Okay. And so the place that you would
16 go to request that would be from time and
17 accounting?

18 A. Time and attendance.

19 Q. Time and attendance.

20 A. I'm sure there would be a way for them
21 to --

22 Q. Okay. Well, at least was Sarah Batsch
23 working for you in the beginning part of 2002?

24 A. What was the name again?

25 Q. Sarah Batsch -- Monica Batsch. I'm

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1 sorry.

2 A. I think so. I know they -- they left
3 town, but I think it was after their dad --

4 Q. Okay. well, let's just go through
5 their list. I take it -- Sonny Cortez, male or
6 female.

7 A. Male.

8 Q. And ethnic background, if you know?

9 A. Filipino.

10 Q. Okay. How about Darwin Daoang?

11 A. Male, Asian descendant.

12 Q. Okay. How about Nicole Davis?

13 A. Female.

14 Q. Do you recall her race?

15 A. White.

16 Q. Okay. Sarah Dexter?

17 A. Female.

18 Q. Uh-huh.

19 A. White.

20 Q. Dolores Doogan?

21 A. Female, white.

22 Q. Charina Fontenot?

23 A. Female, Filipino.

24 Q. Jeff Furber?

25 A. Male, and he was white.

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1 Q. Sherry Garrison?

2 A. Female. I think she has some Native --

3 Q. Okay. Johnna Havard?

4 A. Female.

5 Q. And white?

6 A. Well, she has some -- if I remember
7 right, that she has some Asian, also, blood in her.

8 Q. Okay. So she might be a mix?

9 A. Yeah, I --

10 Q. Okay. You just don't know?

11 A. I guess I don't feel comfortable with
12 saying, you know, white, black --

13 Q. Right. Well, I mean --

14 A. I don't know.

15 Q. My kids are mixed. You can say "mixed"
16 or anything else you want to. I mean, in Hawaii we
17 say "happa," or half something. But let's say --
18 let's say we don't know, but some mix.

19 Myrna Johnson?

20 A. Female.

21 Q. And Filipino?

22 A. Filipino.

23 Q. Jennifer Kipple?

24 A. She's a female. Appears to be white.

25 Q. Julita Lim?

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1 A. Female, Filipino.

2 Q. Hugh McCrummen?

3 A. Male. Not sure.

4 Q. Montana Meyers?

5 A. Female. Appears to be white.

6 Q. Felicisima Oney?

7 A. Female, Filipino.

8 Q. Rosena Salazar?

9 A. Female, Filipino.

10 Q. Vivien Siangco?

11 A. Female, Filipino.

12 Q. Jeffry Smith?

13 A. Male, white.

14 Q. Annmarie Stout?

15 A. Female, mix.

16 Q. And Jeff Wilson?

17 A. Male, and white.

18 Q. Okay. And then Monica Batsch, what is

19 her race? She's obviously female.

20 A. She's female. white.

21 Q. Okay. And was there an employee named
22 Anjelica who was employed during this time period?

23 A. I don't remember the time period. I
24 know that I supervised Anjelica, but I don't
25 remember the times she worked.

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1 Q. Do you remember her last name?

2 A. Masius.

3 Q. Masius?

4 A. Uh-huh.

5 Q. What was her racial background?

6 A. She was Hispanic.

7 Q. Now, what arrangements did you make to
8 have Ms. Johnson's position covered while she went
9 on vacation to the Philippines in January of 2002?

10 A. At that time, I'd have Ms. Fontenot,
11 but I don't know if she was out on leave or not.
12 That was like the first plan. Then we also have
13 Jeff Furber, which at times performed duties of the
14 PIC.

15 Q. Where is Jeff Furber right now, if you
16 know?

17 A. I don't know.

18 Q. You don't know where he's working?

19 A. I have no idea, no.

20 Q. When did he leave Fred Meyer?

21 A. 2-28-02.

22 Q. Okay. Who else?

23 A. And I would probably -- if I need to,
24 probably use Julita, if there is nobody else
25 available. She'd be like the only one that

1 might -- or used to perform that -- that job.

2 Q. Was Julita your last choice?

3 A. Out of this group, if everybody was
4 available, probably, yes.

5 Q. Why is that?

6 A. Because -- because of the schedule.
7 She'd only work like after 6:00, so there was no --
8 not a lot of overlap. So I couldn't give a lot of
9 direction. And she also was talked to by me about,
10 you know, recovery not being complete or to
11 standards. So I tried not to use it -- not to use
12 her, you know, unless it was completely necessary,
13 like a sick call or nobody else available.

14 Q. Okay. Now, Julita -- she was just a
15 clerk?

16 A. Yes.

17 Q. And had she ever been the PIC for
18 closing shift?

19 A. She was at times.

20 Q. Okay. And that's when you were unhappy
21 with recoveries from her?

22 A. Can you be more clear? I guess I don't
23 understand the question.

24 Q. You said that you had problems with
25 Julita's recoveries.

1 A. Uh-huh.

2 Q. My question is, would that have been
3 when she was the PIC for the closing shift?

4 A. Right. If she was in charge -- you
5 know, performing the functions of PIC those nights,
6 yes. There was occasion where the recovery was not
7 to standards.

8 Q. Okay. And if she did something that
9 was not to standards, would you have sent her an
10 office Vision e-mail to that effect?

11 A. I don't remember if she had Office
12 Vision access -- if she had Office Vision access.
13 No, I don't remember.

14 Q. Okay. So Myrna Johnson was gone on
15 vacation. She returned, and then clearly, when she
16 returned, there were -- she was having some family
17 problems; is that correct?

18 A. That's what she said, yes.

19 Q. Okay. Did you have any reason to
20 disbelieve her?

21 A. No.

22 Q. What did she tell you about her family
23 problems?

24 A. After she got back from vacation, at
25 least three or four days after she got back from

1 vacation, I -- she -- she called me, and I asked
2 her, "Hey, I notice that you missed work your first
3 day back. Your second day back, you went to lunch
4 and never came back. You know, now you are
5 calling, you know. Is everything okay?" And then
6 she goes, "Well, I'll be in the store in little
7 bit. Can I talk to you then?" I said "Sure. Come
8 on down."

9 And she came in and told me that
10 when she got back from vacation, when she come
11 home, she find out that her daughter was having
12 some problems, like not staying at home, staying
13 out with friends, that she suspected some substance
14 abuse, and then just different things. And she was
15 very concerned about her daughter.

16 Q. And how could you tell that she was
17 concerned?

18 A. Because you could tell that she was,
19 you know, distraught, upset.

20 Q. Was she crying?

21 A. I don't think at that time she broke
22 down, but I could tell that she was upset. And my
23 observation was that she was upset and distraught
24 and concerned about her daughter.

25 And I told her, "Okay. Well, what

1 is it you need?" And she goes, "well, I really
2 need to find her." And I said, "Okay. well, why
3 don't you just go ahead and take the day off, look
4 for her, and keep me posted. If there is anything
5 I can do for you, just let me know." And that was
6 the extent of the conversation three or four days
7 after she came back from vacation.

8 Q. Now, when did you next hear from her
9 then?

10 A. I don't know if it was the very next
11 day or two days after. I don't know exactly the
12 day, but it was like within two days.

13 Q. Okay. And what did -- and how did she
14 contact you?

15 A. She came into the store.

16 Q. Okay. And what did she tell you?

17 A. She came into -- when she came into the
18 store, she told me that they found her daughter.
19 And they went over and found her at a friend's
20 house, and there was something going on, and that
21 she took her to Bartlett Memorial for observation.
22 And she wasn't sure what she was going to do, that
23 she was going to try to seek treatment for her
24 daughter, but she wasn't sure exactly here, where.
25 She had possibility to go down to the Philippines,

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1 that she'd have to probably be gone for a period of
2 time.

3 And she asked me, you know, "what
4 are my" -- you know, "my choices, if I want to take
5 a period of time to take care of my daughter?"
6 Because she informed me she didn't have any
7 vacation -- she didn't have a lot of vacation time
8 left.

9 And I said, "well, if you are
10 going to be needing time from Fred Meyer, if you
11 leave for more than three days, you have to request
12 a leave of absence, either personal or as a medical
13 leave."

14 Q. Okay.

15 A. And I instructed that she could go --
16 because she had been there more than a year, had
17 worked more than 1,200 hours -- to go to the time
18 and attendance office, talk to the time and
19 attendance person. They'll give her all the
20 paperwork needed to submit the leave of absence,
21 and just follow up on that and just let me know if
22 there was anything else that we could do for her,
23 like, "I'm leaving tomorrow, leaving in a week,
24 this is when I'm thinking about coming back," and,
25 you know, that kind of thing.

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1 BY MR. CHOATE:

2 Q. Were you aware that to get family
3 medical leave, you would have to -- an employee
4 would have to have completed this Certification of
5 Healthcare Provider? Had you ever seen this
6 document before?

7 A. I've seen this document before.

8 Q. Okay. So you were familiar with the
9 fact that, for family medical leave to be approved,
10 would require this document to be sent with the
11 family medical leave application?

12 A. Yes.

13 Q. Do you know if Ms. Johnson was ever
14 given a copy of Exhibit 27? Do you have any
15 independent knowledge of that?

16 A. No, I don't.

17 Q. Okay. Do you know if -- whether either
18 Ms. Harmon or Mr. Boley sent what was an incomplete
19 application for family medical leave to the head
20 office in Portland?

21 A. Do I have knowledge?

22 Q. Yes. Do you have knowledge one way or
23 the other?

24 A. I don't --

25 Q. Okay.

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1 A. -- have knowledge of that.

2 Q. You sent her to time and attendance,
3 and then did you hear from Ms. Johnson again that
4 week?

5 A. I think she called me one more time
6 before -- before she left or was getting ready to
7 leave. I don't know exactly what the day or the
8 time frame after I talked to her the first time.
9 It was before she left.

10 Q. Did Ms. Johnson ever have to take an
11 emergency leave, in your experience, prior to this
12 time in February of 2002, while you worked with
13 her?

14 A. Not that I'm aware, no.

15 Q. Okay. So except for her annual
16 vacations, she was a consistent, steady worker who
17 showed up for her shifts and did her job; is that
18 correct?

19 A. Sure. Yes.

20 Q. Now, did you know when she left how
21 long she intended to be gone?

22 A. She just mentioned about, you know,
23 about a month, but no specific dates. More like be
24 back about a month, or "I'll be gone about a
25 month," she said.

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1 Q. Okay. Well, you are meeting with her,
2 and your purpose was to give her this verbal
3 warning with the written notice that will go in her
4 discipline file -- her personnel file, right?

5 A. This one?

6 Q. Yes.

7 A. It would go into -- at the -- at the
8 store level, yes.

9 Q. It would go in the store file. And
10 then she begins to cry, right?

11 A. At one point, yes, she begins to cry.

12 Q. And she cries until after she -- she
13 starts to cry, and she doesn't stop, and she's
14 crying when she leaves the room, right?

15 A. When she left the room, yes.

16 Q. Okay. And when she started to cry,
17 what did you say?

18 A. When she started crying, I think I was
19 saying like -- you know, it was more on the lines,
20 like, "Well, come now. If there is something
21 wrong" -- and, you know, "What is going on?" And
22 she just said, no, that there was nothing wrong,
23 that she was fine.

24 Q. Okay. But she was still crying?

25 A. Yes. She had tears, yeah.

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1 she crying loudly? Did it sound like she was happy
2 or sound like she was sad?

3 A. It sounded like she was sad.

4 Q. Okay. It sounded like she was
5 distraught, didn't it?

6 A. She was upset.

7 Q. Okay. You are a guy that we have
8 already recognized as someone who also, when
9 emotionally upset, can cry; isn't that right?

10 A. Right.

11 Q. Okay. I'm not saying it's right -- or
12 I'm not saying it's bad, okay? But when she was in
13 the office and she was crying, did it appear to be
14 that she was upset about this notice given to her?

15 A. Right. That's what I said. She was --
16 she sounded upset.

17 Q. Okay. Did you say, "Look, why don't
18 you go and compose yourself, and we'll talk about
19 this when you feel a little better"?

20 A. Because once she get up and said she
21 was leaving, that is when the store director says
22 to her, "If you get up and leave the office and
23 walk out of here, you are walking out of your job.
24 Do you understand that?"

25 Now, I'm completely out. Now it

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1 is the store director giving her -- you know,
2 talking to her. Either call it an order or
3 whatever it is. I mean, he's telling her, "If you
4 do this, this is what it means. Do you understand
5 that?" And she said, "Yes." He told her again,
6 twice. She goes, "I'm leaving." Third time he ask
7 her, "If you leave your job -- if you leave the
8 office, you are walking off the job. Do you
9 understand that?" And she just got up and left.

10 Q. So in your experience as a manager, in
11 training and working with people, if someone is
12 crying and they are emotionally upset, do you
13 believe it is the best time to have a conversation
14 with them regarding their job performance?

15 MR. DICKENS: Objection. Calls
16 for speculation. Go ahead.

17 MR. CHOATE: I'm asking him about
18 his experience.

19 MR. DICKENS: I understand. I
20 object to the question. Calls for speculation. Go
21 ahead.

22 A. I'm sorry. Do I --

23 MR. CHOATE: Do you want to repeat
24 the -- read back that one, please?

25 THE REPORTER: "Question: So in